




FORMAL COMMUNICATION

TO: Regional Operators
Indianapolis Private Industry Council
Regional Coordinators
Trade Adjustment Assistance Coordinators

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Technical Assistance Bulletin TAB 2006-02

Trade Adjustment Assistance – Qualifying Separation Date for Workers' Compensation

The following guidance was received by the U. S. Department of Labor, Region 5, Trade Adjustment Assistance program, with regard to determining the qualifying separation date for workers who are on workers' compensation.

Previously states were told that the qualifying separation was the date that the worker was released from workers' compensation because workers' compensation was authorized leave and/or because a worker was still job-attached through the insurance company while on workers' compensation. Once the insurance company released the worker, the worker would no longer be job-attached and thus separated. A distinction was also made between the end of workers' compensation and the end of medical care by a doctor. In many cases, a doctor may not release a worker until well after the insurance company. In these situations, we instructed states that the qualifying separation was still tied to the end of coverage by the insurance company. Based on this interpretation, states would then be expected to calculate the 8/16 week requirement for enrollment in training or the waiver from training when the insurance company released the worker from workers' compensation. *This interpretation is incorrect.*

The date of separation for an individual who is on employer-authorized leave is the last day that the individual could have worked but for the leave.

This means that if the employer-authorized leave (paid or unpaid) is for six months and the plant shuts down earlier than the six months of authorized leave, the date of the shutdown is the date of separation (20 CFR 617.3 (l)). Once the date of separation is established, the 8/16 weeks are counted from that date.

Consistent with the above scenario, it would follow that the date of separation for an individual who is receiving workers' compensation at the time of the shutdown is the date of the shutdown even though workers' compensation payments may continue under the plan after the shutdown. The driving factor is the plant shutdown and not the exchange of compensation.

Following this further, the outcome would be the same if the worker is employed in group A within the firm and such group experiences a shutdown/mass layoff, yet group B remains in operation.

Here are some scenarios that may be helpful:

Scenario 1:

- Issued a notice of shutdown in August 2006
- Ten workers are on workers' compensation when the notice is issued.
- The shutdown is December 31, 2006.
- The workers remain on workers' compensation until April 2007.

The qualifying separation is December 31st. The shutdown date is the key date. The notice does not interfere with the qualifying separation.

Scenario 2:

- Company issues a notice of mass layoff in August 2006.
- The workers are laid off on August 12, 2006.
- One worker that is on workers' compensation is on the layoff list.
- The last day worked for the worker was April 1, 2006.
- The worker remains on workers' compensation through October 31, 2006.
- Doctor releases worker from doctor's care on November 12, 2006.

The qualifying separation is 08/12/06. However, Unemployment Insurance and Trade Readjustment Assistance eligibility may not be established though until 11/12/06 because of the doctor's release (able and available issue).

Scenario 3:

- The last day worked is December 10, 2004
- Informed by company that person is laid off on March 31, 2005
- Workers' compensation ends November 30, 2005
- Doctor releases the worker from care February 9, 2006.

The qualifying separation is 03/31/05.

Three additional points to keep in mind:

- 1) The qualifying separation must always be during the period covered by a certification/impact dates in order to be eligible for TAA services.
- 2) Long periods of workers' compensation will make individuals ineligible for Unemployment Insurance/Trade Readjustment Assistance because of a lack of base period wages or low weekly benefit amounts when the separation occurs.

- 3) Training may still be an option. We would still have to assess the ability of the participant to engage in training activities and complete training, and whether the participant can complete training without income support.

The Department of Labor has indicated that states will have to adhere to this interpretation immediately, and take appropriate action with new layoff/workers' compensation/TAA applications. Also, the Indiana Department of Workforce Development will take appropriate action with any individuals identified as having a miscalculated qualifying separation through our monitoring process.

Questions concerning qualifying separations may be addressed to:

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